

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

BURLINGTON STORES, INC.,	:	Hon. Joseph H. Rodriguez
<i>Plaintiff,</i>	:	Case No: 21-12983
v.	:	Order Staying Case
ZURICH AMERICAN INSURANCE CO.,	:	
<i>Defendant.</i>	:	

Defendant Zurich American Insurance Company (“Zurich”), a commercial property insurer, denied Plaintiff Burlington Stores, Inc.’s (“Burlington”) claim to recover business interruption losses and expenses caused by the COVID-19 pandemic and the related governmental shutdown orders. The present matter comes before the Court upon Zurich’s motion to dismiss [Dkt. 35], filed on July 13, 2022. On March 1, 2023 this Court Ordered Plaintiff to show cause why this matter should not be dismissed in light of the *Wilson v. USI Ins. Serv. LLC*, 57 F.4th 131 (3d Cir. 2023). In response, Plaintiff submits that the issues of state law predicted in *Wilson* are currently pending in the New Jersey Supreme Court in *AC Ocean Walk, LLC v. Am. Guar. & Liab. Ins. Co.*, 252 N.J. 606, 288 A.3d 447 (2023) (N.J. Jan. 24, 2023). In addition, the practice in this district has been to stay similar matters pending a decision by the New Jersey Supreme Court in *AC Ocean Walk*. *See Icona Opportunity Partners 1, LLC v. Certain Underwriters at Lloyds*, No. 22-4140 (KMW)(EAP), 2023 U.S. Dist. LEXIS 41559, at *3 (D.N.J. Mar. 13, 2023).

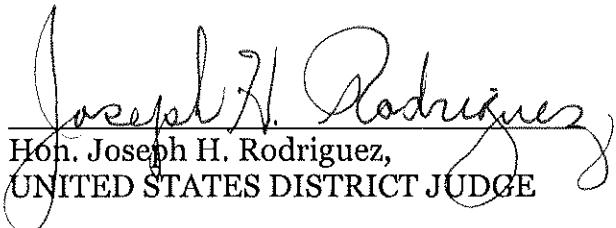
In support of dismissal, Defendant argues that the mere presence of the virus, or any general threat arising from its purported presence, does not constitute the requisite “direct physical loss of or damage to property” as set forth in *Wilson*, 57 F.4th at 145. In addition, Burlington relies on conclusory statements that the virus causes “direct physical loss of or damage,” which is a legal conclusion that is entitled to no deference.

It now appears that the legal significance of the operative phrase “physical loss or damage” will be determined by the New Jersey Supreme Court in *AC Ocean Walk* since that phrase is central to the Appellate Division’s reasoning in that case. *AC Ocean Walk, LLC v. Am. Guarantee & Liab. Ins. Co.*, No. A-1824-21, 2022 WL 2254864, at *13 (N.J. Super. Ct. App. Div. June 23, 2022) (The COVID-19’s presence and/or the government-mandated shutdown does not constitute a direct physical loss of or damage to Ocean as required under the policies.”) Therefore, this Court agrees that a stay is warranted for the same reasons set forth by the court in *Icona Community Partners 1, LLC*, No. 22-4140 (KMW)(EAP), 2023 U.S. Dist. LEXIS 41559, at *3.

Therefore, it is on this 28th day of March 2023, hereby

ORDERED that this matter is STAYED and pending the resolution of *AC Ocean Walk, LLC v. American Guarantee and Liability Insurance Company* before the New Jersey Supreme Court; and it is further

ORDERED that the parties shall submit a joint letter to the Court providing an update on this case within fourteen (14) days of the entry of the New Jersey Supreme Court’s decision in *AC Ocean Walk, LLC*.



Hon. Joseph H. Rodriguez,
UNITED STATES DISTRICT JUDGE